

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.719 OF 1998

Smt.Chanchal N.Ruparel	...Plaintiff
VS.	
Bombay Suburban Electric Supply Co.Ltd.	...Defendants

Mr.S.D.Mogre for the Plaintiff
None for the Defendant

CORAM: A.S.OKA, J.
DATE : AUGUST 28, 2007

JUDGMENT:

1. The suit is listed under the caption 'Undefended suits for exparte decree'.

2. The plaintiff was holding an electricity connection of defendant to a flat more particularly described in paragraph 1 of the plaint. According to the case of the plaintiff, the normal bill of electricity was Rs.15,000/- to 20,000/- per month. According to the case of the plaintiff, a bill was issued for the month of June 1997 for the first time showing arrears of Rs.94,015.29/- by the defendant against the plaintiff. The current bill for June 1997 was shown as Rs.1389.18 By a letter dated 30th July 1997, the plaintiff protested against the said excess bill. It is the case of the plaintiff that in subsequent bills, arrears were shown on the basis of the arrears of Rs.94,15.229/- shown in the bill of June 1997. A chart has been annexed at Exh.P to the plaint showing the amount payable under the various bills from 3rd

April 1997 and arrears shown by the defendants from July 1997. According to the case of the plaintiff, after deducting the current amount payable, bills issued for the period of March 1997 to January 1998, an excess payment of Rs.73,527.48 has been made. The prayer in the suit is for declaration that the bill issued for month of December 1997 is illegal. The second prayer is for direction to the defendant to adjust the excess payment of Rs.73,527.48 and the third prayer is for perpetual injunction.

3. By an ad-interim order dated 20th February 1998, the defendant was restrained from disconnecting the electricity supply subject to the plaintiff depositing a sum of Rs.50,000/- with the defendant. The order dated 15th October 1998 notes that the sum of Rs..50,000/- was already deposited by the plaintiff. By the said order, ad-interim order passed earlier was confirmed.

4. The plaintiff has filed an application for seeking permission to lead secondary evidence. The said application is taken on record and marked 'X' for identification. It is stated in the application that the originals of documents Exhibits A,B,C,D and O annexed to the plaint could be traced out and the original documents at F, G, H, I, J, K, L, M, & P were not traceable. A prayer is made for permitting the plaintiff to lead secondary evidence of the said documents by producing Xerox copies thereof. The plaintiff has also

tendered on record a compilation of the 17 documents including the Xerox copies as aforesaid. The said compilation is marked 'Y' (collectively) for identification. The plaintiff has also filed an affidavit of her constituted attorney for proving the claim made in the suit. The said Affidavit is marked as 'Z' for identification.

5. In view of the averments made in the application (marked 'X') filed by the plaintiff, a permission deserves to be granted to the plaintiff to lead secondary evidence of the documents which are not traceable by producing xerox copies thereof.

6. Perusal of the documents which are produced by the plaintiff show that for the first time in the bill issued for the month of June 1997, arrears of Rs.94,015.29 were shown by the defendants. The bill for the month of May 1997 is also produced on record which shows that no arrears or adjustment was shown by the defendants and the bill issued for May 1997 was only in respect of the current charges. The documents which are produced by the plaintiff have been proved by the affidavit of her Constituted Attorney. The defendant has not filed any written statement. There is no explanation as to how arrears/adjustment of Rs.94,015.29 was shown for the first time in the bill of June 1997 when the said amount is not shown in the bill for May 1997. The plaintiffs have paid a total amount of Rs.1,64,494/- towards the bills issued for the

period of March 1997 to January 1998. If the total amount payable during the said period on account of current charges is considered, a sum of Rs.73,527.48 has been paid in excess by the Plaintiff.

7. Considering the aforesaid facts, a case is made out for passing a decree in favour of the plaintiff in terms of prayer clauses (a) to (c). The plaintiff has paid a sum of Rs.50,000/- to the defendant on the basis of the ad-interim order passed by this court in the present suit. As the suit is being decreed, the plaintiff is seeking a refund of the said amount. However, the defendant can be directed to adjust the said amount in the future bills.

8. The suit is decreed in terms of prayer clauses (a) to (c). The sum of Rs.50,000/- paid by the plaintiff to the defendant as per the order passed by this Court in the notice of motion No.900 of 1998 shall be adjusted by the defendant against the future bills i.e. bills issued hereinafter

9. The Plaintiff will be entitled to costs of the suit from the defendant. The plaintiff will be entitled to refund of court fee, if any, as per the rules.

10. Certified copy is expedited.

11. The plaintiff is entitled to take back the original

documents after the decree is sealed.

JUDGE